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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 525

HERBERT E. SAIER,
Petitioner,

vs.

STATE BAR OF MICHIGAN An Association claimed to be a state agency, and MILTON E. BACHMANN, as Executive Secretary of the State Bar of Michigan and Individually, JOSEPH C. COX, as former Executive Assistant of the State Bar of Michigan, and Individually, and JOSEPH H. PLANCK, as Executive Assistant of the State Bar of Michigan and Individually, and RUSSELL A. SEARL, as attorney for the State Bar of Michigan and Individually, and

THE SUPREME COURT OF THE STATE OF MICHIGAN and JOHN R. DETHMERS, as Justice of said Supreme Court and in his Individual capacity, and LELAND W. CARR, as Justice of said Supreme Court and in his individual capacity, and HARRY F. KELLY, as Justice of said Supreme Court and in his Individual capacity, and TALBOT SMITH, as Justice of said Supreme Court and in his Individual capacity, and EUGENE F. BLACK, as Justice of said Supreme Court and in his Individual capacity, and GEORGE EDWARDS, as Justice of said Supreme Court and in his Individual capacity, and JOHN D. VOELKER, as ex-Justice of said Supreme Court and in his Individual capacity, and EDWARD M. SHARPE, as ex-Justice of said Supreme Court and in his Individual capacity,

Respondents

BRIEF ON BEHALF OF RESPONDENTS STATE BAR OF MICHIGAN, BACHMANN, COX, PLANCK AND SEARL IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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RULES OF THE SUPREME COURT OF THE UNITED STATES

PART V. JURISDICTION ON WRIT OF CERTIORARI

19.

CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. * * *"

COUNTER-STATEMENT OF QUESTIONS INVOLVED

I.

Did the complaint allege a cause of action cognizable by the United States District Court?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

II.

Was the petitioner a proper party to present the issues described in his complaint?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

III.

Did the petitioner state a ground for relief?

The District Court did not specifically reach this issue in its opinion.
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

IV.

Were the members of the Supreme Court of the State of Michigan, or the District Judge or members of the Court of Appeals disqualified?

The District Court answered this question "No" as to the members of the Supreme Court of Michigan.

The Court of Appeals answered this question "No" as to the members of the Supreme Court of Michigan.

Neither the District Court nor the Court of Appeals reached this alleged issue as to the District Judge.

The Court of Appeals did not reach this issue as to the members of the Court of Appeals.

Respondents contend the answer should be "No."

SUBJECT INDEX

	Page
Rules of the Supreme Court of the United States, Part V	i
Counter-Statement of Questions Involved	iii-iv
Counter-Statement of Material Facts	2-8
Argument	9-47
I. Did the complaint allege a cause of action cognizable by the United States District Court?	9-29
A. The Courts of the United States have no jurisdiction to review the conduct of the highest Court of a State, or the State Court's rules and proceedings thereunder, pertaining to whether or not any of the State Court's officers should be disciplined by the State Court for misconduct	9-16
B. The constitutionality of the State's statute creating the State Bar of Michigan and the constitutionality of the rules adopted by the Supreme Court of the State of Michigan concerning the State Bar of Michigan are not determinable in this proceeding	17-26
C. The petitioner's assertions in his requests for investigation of some four Lansing attorneys, his assertions in his complaint filed in the District Court and his assertions herein constitute attempted collateral atacks on proceedings in the lower Courts of a State	27-29
II. Was the petitioner a proper party to present the issues described in his complaint?	29-32

Page

III. Did the petitioner state a ground for relief? 32-40

A. The petitioner has failed to allege circumstances giving rise to damages as to the respondents in this cause..... 32-33

B. The petitioner's references to damages sustained by the petitioner are too inadequate and uncertain to permit speculation as to damages in this proceeding..... 33-35

C. The petitioner has failed to allege circumstances setting forth inequality in the processing of the petitioner's requests for investigation as compared to other requests for investigation filed with the State Bar of Michigan 35-36

D. The petitioner has not demonstrated that he has been denied a hearing..... 36-38

E. The petitioner presented conflicting statements and admonitions whereby the petitioner made it impossible to process his requests for investigation of the attorneys 38-40

IV. Were the members of the Supreme Court of the State of Michigan or the District Judge or members of the Court of Appeals disqualified 41-43

Summary of Argument..... 44-47

Conclusion 47

INDEX TO AUTHORITIES CITED

Cases

	Page
Allen v. Groat, 283 F. 2nd 692, C. A. 6	42
American Ry. Express Co. v. Commonwealth of Kentucky, 273 U. S. 269, 47 S. Ct. 353, 71 L. Ed. 639	24
Arrowsmith v. Harmoning, 118 U. S. 194, 195, 6 S. Ct. 1023, 30 L. Ed. 243	24
Ayres v. Hadaway, 303 Mich. 589, 6 N. W. 2d 905	15, 19, 25
Bonifaci v. Thompson, 252 F. 878	22
Bonner v. Gorman, 213 U. S. 86, 29 S. Ct. 483, 53 L. Ed. 709	24
Bradley v. Fisher, 80 U. S. 335, 13 Wall. 335	42
Bradwell v. Illinois, 16 Wall. 130, 139, 21 L. Ed. 442	14, 19, 21, 25
Burr, Ex parte, 9 Wheat. 529, 6 L. Ed. 152	16, 20
Central Land Co. v. Laidley, 159 U. S. 112, 16 S. Ct. 80, 40 L. Ed. 91	24
Crow, In re, 283 F. 2nd 685, C. A. 6	15
Dunlap v. Byers, 110 Mich. 109, 67 N. W. 1067	29
Duplex Co. v. Deering, 254 U. S. 443, 465	42
Emmons v. Smitt, 58 Fed. Supp. 869 (D. C. E. D. Mich.)	18-23
Emmons v. Smitt, 148 F. 2nd 869, C. C. A. 6	23-25
Erie R. Co. v. Thompkins, 304 U. S. 64, 78, 58 S. Ct. 817, 822, 82 L. Ed. 1188, 114 A. L. R. 1487	25
Garland, Ex parte, 71 U. S. 333, 378, 4 Wall. 333, 378	16
Green v. Elbert, 8 Cir., 63 F. 308	19
Iowa Central Ry. Co. v. State of Iowa, 160 U. S. 389, 393, 16 S. Ct. 344, 40 L. Ed. 467	24
Keenan, Re, 287 Mass. 577	29-30
Kenney v. Fox, 232 F. 2nd 288, C. A. 6	42

Page

Konigsberg v. State Bar of California, 353 U. S. 252, 1 L. Ed. 2nd 810, 77 Sup. Ct. 722..... 10, 15

Konigsberg v. State Bar of California, — U. S. —, 6 L. Ed. 2nd 105..... 11

Lathrop v. Donohue, — U. S. —, 6 L. Ed. 2nd 1191.. 25, 32

Lockwood, Ex parte, 154 U. S. 116, 14 Sup. Ct. 1082, 38 L. Ed. 929..... 19, 25

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 290, 293, 18 S. Ct. 594, 42 L. Ed. 1037..... 24

McDonald v. Oregon, R. & Nav. Co., 233 U. S. 665, 669, 34 S. Ct. 772, 58 L. Ed. 1145..... 24

Petition of Walter O. Estes, In re, 361 U. S. 829, 4 L. Ed. 2nd 71, 80 S. Ct. 77..... 17, 18

Pettiford v. Zoellner, 45 Mich. 358, 8 N. W. 57..... 29

Petranek v. Minneapolis, St. Paul and S. S. M. R. Co., 240 Mich. 655, 216 N. W. 467..... 29

Potter v. Ranlett, 116 Mich. 454, 74 N. W. 661..... 29

Richardson v. Richardson, 309 Mich. 336, 15 N. W. 2d 666, cert. den. 324 U. S. 864, 89 L. Ed. 1420, 65 Sup. Ct. 912..... 29

Rooker v. Fidelity Trust Co., 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362..... 20

Schware v. Board of Bar Examiners of the State of New Mexico, 353 U. S. 232, 1 L. Ed. 2d 796, 77 Sup. Ct. 752..... 10, 15

Selling v. Radford, 243 U. S. 46, 37 S. Ct. 377, 378, 61 L. Ed. 585, Ann. Cas. 1917D 569.....15, 20, 21

Simpson v. Geary, D. C., 204 F. 507..... 22

State of Missouri ex rel. Hurwitz v. North, 271 U. S. 40, 42, 46 S. Ct. 384, 70 L. Ed. 818..... 24

Thatcher, In re, D. C. Ohio, 190 F. 960..... 19, 25

Theard v. United States of America, 354 U. S. 278, 1 L. Ed. 2d 1342, 77 Sup. Ct. 1274..... 12, 15

Page

Tracy v. Ginzberg, 205 U. S. 170, 177, 27 S. Ct. 461, 51 L. Ed. 755 24
United States ex rel. Parker v. Carey, 7 Cir., 135 F. 2d 205 20
Yeiser v. Dysart, 267 U. S. 540 15
Williams v. Riley, 280 U. S. 78 17

Other

Michigan Statutes Annotated, Sections 27.79, 27.102 16
Michigan Supreme Court Rules concerning the State Bar of Michigan, Rule 15 ..... 16, 33, 35, 36, 39
Rules of the Supreme Court of the United States, Part V, Jurisdiction on Writ of Certiorari i
United States Code, Sec. 1983 of Title 42 ..... 7, 13, 16

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COUNTER-STATEMENT OF MATERIAL FACTS

The petitioner's complaint as filed in the United States District Court consisted of 92 pages and included 160 numbered paragraphs. This Counter-Statement of Facts can only be in narrative form without challenging each statement of petitioner, due to the length of the complaint and the many conclusions in petitioner's statement.

The petitioner indicated in said complaint (1b) that the origin of the circumstances to which he refers was in the death of one Jessie E. Saier on April 14, 1951, the petitioner being one of three sons of said decedent. The Will of said Jessie E. Saier as filed for probate left various bequests and then left a major portion of the estate, one-third to each of the decedent's sons, including the petitioner (1b). The petitioner not only admits, but asserts, that said Will of Jessie E. Saier, deceased, was duly admitted to probate in the Probate Court for the County of Ingham on September 6, 1955, at which time the petitioner was present and stated affirmatively that he had no objection whatsoever to the admission of said Will to probate (22a and 23a).

In said complaint as filed with the District Court, the petitioner described at length various State Court proceedings pertaining to said Estate of Jessie E. Saier, deceased.

The petitioner then alleged that approximately on July 16, 1956, he filed Requests for Investigation, or complaints, against three or four Lansing attorneys who were connected with the State Court proceedings involving said estate, alleging misconduct on the part of said attorneys (67a). The petitioner then alleges that the Request for Investigation forms were re-drafted and sent to the State

Bar of Michigan (68a). The petitioner further describes disputed facts with reference to whether or not on October 8, 1956 a letter was addressed from the Executive Secretary of the State Bar of Michigan to the petitioner, returning to him the complaint forms which he had filed with the suggestion that they should contain more specific allegations as to misconduct (28a and 29a). The petitioner stated in the complaint as filed in the District Court that the forms were not returned to him, but he acknowledged in the complaint that the Executive Secretary of the State Bar of Michigan claimed to have returned such forms to the petitioner with a letter of October 8, 1956 suggesting that the description of misconduct would need to be more precise (28a and 29a). In any event, the petitioner did not allege that he filed any further complaint forms with the State Bar of Michigan.

At the time of filing the requests for investigation of four Lansing attorneys, the petitioner at the same time filed a single file of some 56 pages of miscellaneous exhibit material, photostatic copies and other matters to which reference was made in the requests for investigation as to each of the four lawyers (68a). In other words, the petitioner filed forms of request for investigation as to three or four lawyers and then filed separately only a single set of various exhibits to which reference was made in each of the requests for investigation.

In the form in which these papers were filed by the petitioner, as indicated by the petitioner's own statement (68a), the single file of some 56 pages of exhibits and photostatic copies was incorporated by the petitioner by reference in each of the four sets of requests for investigation, requiring cross-reference between the exhibits and requests for investigation in order to ascertain the nature of the charges. Not only did the petitioner fail to file a separate

set of exhibits as to each of the attorneys concerning whom he has requested an investigation file be established, he also failed to include an additional set of these exhibits for each of those files (68a and 71a) for service upon the respondent attorneys.

Further, at the time the requests for investigation of the three or four Lansing attorneys were filed by the petitioner, they were filed under the petitioner's own admonition (71a and 72a):

> "These are not to be filed with either the Ingham County Probate Court *or any other court, directly or indirectly* by any other person in an attempt to get this heir out of the will, as this heir is not contesting the will in his own behalf or in behalf of any other person." (Emphasis supplied.)
>
> "This file has all of the exhibits in their proper place in the setting out the allegations in their order. In other words each of the allegations of this petitioner are followed by evidence of proof, so that this Bar Committee will not have to look all through the file to find the evidence."

In addition, the petitioner repeatedly emphasized that the Will of said Jessie E. Saier was *duly* admitted to probate and the petitioner stated in Court at the time of admission of said Will that he had no objection to such admission (22a and 23a). In the same requests for investigation, the petitioner set forth in detail in many paragraphs, one of which appeared as paragraph 86 of the complaint as filed in the District Court (1b), statements alleging that the Will as admitted to probate in said estate was not properly executed. The petitioner, in the requests for investigation, requested the grievance organization of the State Bar of Michigan to find that the respondent attorneys had participated in the allegedly-illegal signing of

a purported Will (1b) in order to find them guilty of various of the acts charged by the petitioner, while at the same time taking the position that the Will was properly admitted (22a and 23a) that he had no objection to the Will and that this alleged evidence of improper execution of the Will was not to be filed in any Court (71a and 72a).

It is further noted that nowhere in the complaint filed in the District Court does the petitioner allege, nor can he properly allege, that the requests for investigation or any of them were dismissed by the grievance organization of the State Bar of Michigan, either administratively or otherwise. The petitioner correctly has indicated that a dispute existed between the petitioner and the staff of the State Bar of Michigan (27a-29a) as to whether he had complied with the rule requiring a brief statement setting forth explicitly the purported misconduct of which complaint was made. He filed no further revisions of the requests for investigation after the second revision filed by the petitioner. The petitioner further alleges, and accurately, that after filing the second revision of his requests for investigation, while a dispute still was existing as to whether they were in a form compatible with the rules requiring a brief statement of specific misconduct, he filed a series of two petitions (10a-11a) for writs with the Supreme Court of the State of Michigan (rather than attempting a further revision of his requests for investigation).

The petitioner states that in 1956 and again in 1958 the plaintiff petitioned the Supreme Court of the State of Michigan for a Writ of Mandamus with reference to grievance proceedings as to said respondent attorneys (10a-11a), setting forth in full his position in the complaint, and that in both instances the Supreme Court of the State of Michigan denied the petitioner's petitions for Writs of Manda-

mus (66a). The petitioner does not allege, nor can he allege, that he attempted any further revision of his requests for investigation, requiring a *brief statement of explicit charges* of misconduct. Neither did he file any appeal to this Court from the decisions of the Michigan Supreme Court.

On the basis of the matters in the complaint as filed in the District Court, the petitioner requested that the District Court find the defendants guilty of failure to perform their respective duties, that they be found guilty of conspiring together and with others to deny the petitioner his constitutional rights as to equal protection, due process, impartial tribunal and freedom from unjust discrimination, that the Court find certain sections of Rule 15 of Michigan Supreme Court Rules pertaining to the State Bar of Michigan to be unconstitutional, that the Court find that the Michigan Statute creating the integrated Bar of the State of Michigan to be unconstitutional and that the petitioner be awarded judgment for damages.

It is further noted that the petitioner claims to have been damaged by the conduct of the four respondent attorneys in Lansing, but nowhere does he allege in his complaint that, at any time during the years that the estate and collateral suits have been pending, the petitioner instituted suit against any one of the respondent attorneys either to enjoin the attorneys' conduct of which he complains nor for damages by reason of any loss which he might have sustained. The petitioner indicates that the only relief which he seeks as to the attorneys is to have hearings with reference to whether or not the attorneys should be disciplined as attorneys. He has not, and does not here, seek relief against such attorneys whom he claims gave rise to his troubles, either by way of injunction or suit at law.

We further refer the Court to the concise statement of facts as contained in the opinion of the Court of Appeals for the Sixth Circuit (Appendix to Petitioner's Petition, pages 28 and 29), more particularly as follows:

> "Mr. Saier brought this action as a diversity of citizenship case, alleging that he was a citizen of Missouri and that he was damaged in excess of $10,000, exclusive of interest and costs. The district judge considered the complaint as an attempt to state a cause of action under section 1983 of Title 42 U. S. C., known as 'The deprivation of civil rights act.' The appeal is argued to us as such an action. The appellant has apparently abandoned any claim to jurisdiction by reason of diversity of citizenship. We consider that no cause of action is stated as a diversity case and therefore do not discuss that theory further.
>
> We are of the opinion, as was the district judge, that if any cause of action is stated, the facts as alleged would invoke jurisdiction by virtue of the civil rights act. The question presented then is whether there are sufficient facts alleged in the complaint to show that the appellant was deprived of any 'right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.' Section 1343(3), Title 28, U. S. C.[1]
>
> The pertinent facts as alleged in the complaint are as follows: On July 16, 1956, the plaintiff-appellant filed a complaint against four lawyers of the

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[1] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress." Section 1983 of Title 42 U. S. C.

Michigan Bar, in the office of the State Bar of Michigan, at Lansing, with Executive Secretary Milton E. Bachman and Executive Assistant Joseph C. Cox. The lawyers involved in the charge were notified of the charges contained in the complaint. The appellant filed an amended and corrected request for investigation on September 10, 1956. On October 3, 1956, Mr. Bachman and Mr. Cox advised him that he had to make out new forms. He refused to do this and on November 15, 1956 filed a petition for a writ of mandamus with the Supreme Court of Michigan. This petition was denied and subsequently he filed another petition with the same court for writ of mandamus which was also denied.

The complaint does not state the specific charges that were made against the accused lawyers, but inferentially it appears that they involve '• • • unethical conduct, false testimony and attempted murder with a deadly weapon, and with charges of their taking of a complete file out of the Probate Court of the County of Ingham, Michigan.'

There is reference in the complaint to suits in various courts of Michigan both past and now pending. It is alleged that three of the accused lawyers have commenced an action on the equity side of the court, in Ingham County, Circuit Court.

No disciplinary action has been taken against the lawyers named in the request for investigation, and the appellant claims that his complaint has not been processed by the Michigan State Bar. This he claims is a denial of a right guaranteed to him under the Fourteenth Amendment of the Federal Constitution. Specifically, he claims it is a denial of due process of law, a denial of equal protection of the laws and unjust discrimination."

ARGUMENT

I.

DID THE COMPLAINT ALLEGE A CAUSE OF ACTION COGNIZABLE BY THE UNITED STATES DISTRICT COURT?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

A. The Courts of the United States have no jurisdiction to review the conduct of the highest Court of a State, or the State Court's rules and proceedings thereunder, pertaining to whether or not any of the State Court's officers should be disciplined by the State Court for misconduct.

It has been held repeatedly that matters pertaining to the misconduct of attorneys as officers of the Courts of the several States shall be within the exclusive jurisdiction of the Courts of the States themselves and, on the other hand, any discipline imposed on attorneys as officers of Federal Courts shall be within the jurisdiction of the Federal Courts exclusively. Otherwise stated, a United States Court will not supervise a State Court in administration of discipline to officers of the State Court.

The Supreme Court of the United States has set forth a line of demarcation as to those matters included within, and those matters excluded from, jurisdiction of the Federal Courts as pertaining to the license to practice law in the Courts of a State: Upon application to a Federal Court by an applicant for admission to the Bar of a State, the Federal Court will assume jurisdiction to the extent of determining whether or not denial of admission to the

State Court is by reason of a matter which contravenes the "due process" or "equal protection" clause of the Fourteenth Amendment. On the other hand, the Federal Courts and the State Courts each are autonomous in determining whether or not discipline shall be imposed upon an attorney licensed to practice in either type of Court. This line of distinction as established by the Supreme Court of the United States is set forth in the series of three cases appearing in 1 Law Edition 2d of U. S. Supreme Court Reports, all decided in 1957 (one being reheard in 1960, decided 1961):

(1) In the case of *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232, 1 Law Edition 2d 796, 77 Supreme Court 752, the petitioner was an applicant for admission to the Bar of the State of New Mexico. Over fifteen (15) years prior to the application he had been arrested on charges not involving moral turpitude and never tried. He had been a member of the Communist Party some fifteen (15) years earlier. In that case, the United States Supreme Court held that the State of New Mexico had deprived the petitioner of due process in denying him admission to practice law in the State of New Mexico, for there was not a sufficient showing of lack of good moral character. The Supreme Court of the United States assumed jurisdiction of the case and founded its decision upon the determination that:

> "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

(2) In *Konigsberg v. State Bar of California*, 353 U. S. 252, 1 Law Edition 2nd 810, 77 Supreme Court 722, the petitioner likewise was an applicant for admission to the

practice of law in the Courts of a State. In that case, there was a charge, not reliably proven, that the petitioner had been a member of the Communist Party in 1941 and upon questioning by the Committee of Bar Examiners of the State of California some fifteen (15) years later, the petitioner refused to answer certain questions about membership in the Communist Party on the ground that a State could not inquire into an applicant's political opinions or associations. The opinion of Mr. Justice Black specifically indicates that the State Bar of California did not base its exclusion of the petitioner upon his failure to answer and, accordingly, the opinion specifically excludes determination as to whether or not failure to answer in itself is an adequate reason for denial of admission to the Bar of a State. The Court determined that even if the petitioner had belonged to the Communist Party some fifteen (15) years earlier, which was not completely established, that was not sufficient to indicate that fifteen (15) years later the petitioner advocated overthrow of the Government by force. The Court thereupon determined that the denial of the petitioner's application for admission to the State Bar of California was not reasonable and, accordingly, was in denial of the "due process" clause.

After a second rejection of Mr. Konigsberg's application for admission to the State Bar of California, he filed a further petition for a Writ of Certiorari with the Supreme Court of the United States at which time this Court determined that, as to Mr. Konigsberg's refusal to answer questions as to prior membership in the Communist Party (Mr. Justice Harlan delivering the opinion of the Court):

> "We think it clear that the Fourteenth Amendment's protection against arbitrary state action does not forbid a State from denying admission to a bar applicant so long as he refused to provide unprivileged answers to questions having a substantial relevance to his qualifications." *Konigsberg v. State*

Bar of Calif., — U. S. —, 6 L. ed. 2nd 105 (1961), 113.

(3) Having defined in the foregoing cases the extent to which it would assume jurisdiction under the "due process" clause with reference to applicants for admission to the Bar of a State, the Supreme Court of the United States then considered the case of *Theard v. United States of America*, 354 U. S. 278, 1 Law Edition 2d 1342, 77 Supreme Court 1274. In that case, the petitioner had been disbarred by the Supreme Court of the State of Louisiana by reason of having uttered a forgery some eighteen (18) years earlier. The opinion of the Court was delivered by Mr. Justice Frankfurter and set forth a general discussion with reference to the finality of determinations by State Courts and by Federal Courts as to the license to practice law, with reference to whether or not determinations by either Court were binding in the other. In this instance, the Supreme Court of the United States determined that the petitioner's disbarment by the Supreme Court of Louisiana was "entitled to high respect, but is not conclusively binding on the federal courts". The Court stated:

> "While a lawyer is admitted ino a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have *autonomous control* over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court." (Emphasis supplied.)

In accordance with this principle, the Supreme Court of the State of Michigan has inherent power to determine what persons may continue to be listed on the roster of attorneys licensed to practice law in the Courts of the

State of Michigan. This inherent power of the Supreme Court of the State of Michigan, and the manner in which it is exercised by that Court, the content of any rules pertaining to that power made by the Michigan Supreme Court, together with conduct under such rules, remain in the State and the same do not present substantial Federal questions either as to the content or the manner of exercise.

We emphasize the excellent opinion of the Court of Appeals for the Sixth Circuit, finding that the Petitioner has no right to have a complaint against a Michigan lawyer processed secured to him by the Fourteenth Amendment to the United States Constitution. The Court of Appeals for the Sixth Circuit stated that (Petitioner's Appendix, 29 through 32):

> "The pertinent part of the amendment reads, as follows: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'
>
> "The question before the Court is a very narrow one. To determine that question, we are not concerned with what might be the ultimate outcome of a hearing of the charges against the accused lawyers. Neither is the seriousness of the misconduct complained of material for our determination of the question involved.
>
> "Assuming that the appellant's 'Request for investigation' of certain attorneys has been denied by the State Bar of Michigan, has he been denied a right which is given to him by the Fourteenth Amendment to the United States Constitution?
>
> "Section 1983 of Title 42 U. S. C. provides that an action may be brought for redress of the 'de-

privation of any rights, privileges, or immunities secured by the Constitution * * *' (Federal). If the appellant has been denied the right of which he complains, his redress would be to have the District Court order the processing of the complaint by the State Bar. The ultimate that he might expect from this would be the disbarment of the accused lawyers. This might give him a certain amount of personal satisfaction but no material gain would result to him as a consequence of such action. It would not give him any judgment against the lawyers of whose misconduct he complains and whose actions caused him financial loss. Therefore, he has not been deprived of 'life, liberty, or property * * *.' There are no allegations in the complaint to support a charge of a denial of equal protection of the laws or that he has been the subject of unjust discrimination.

"Not only has he not suffered, according to the allegations of his complaint, any deprivation of a right under the Federal Constitution as a matter of fact, but legally no such right as he claims is guaranteed to him by the Federal Constitution.

"License to practice law, the continuation of such license, regulation of the practice and the procedure for disbarment and discipline are all matters that are within the province of an individual state. As in Michigan, the creation of the office of attorney, the regulation and control of the practice of law, along with the procedure of disbarment is governed by 'The Judicature Act' under the headings 'Attorneys and Counselors,' section 27.68.et seq. and 'State Bar Association,' sections 27.101 and 27.102, respectively, of Title 27, Michigan Statutes Annotated; Rule 15, State Bar of Michigan.

"In *In re Lockwood, Petitioner*, 154 U. S. 116, the court said, at p. 117: 'In *Bradwell v. The State*, 16 Wall. 130 (83 U. S. 130), it was held that the right to practice law in the state courts was not a privilege or immunity of a citizen of the United States;

that the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers that was not transferred for its protection to the Federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license.' (Emphasis added.) And at p. 118: 'It was for the Supreme Court of Appeals to construe the statute of Virginia in question, and to determine whether the word "person" as therein used is confined to males, and whether women are admitted to practice law in that Commonwealth.' See also: *Yeiser v. Dysart et al.*, 267 U. S. 540; *Ayres v. Hadaway*, 303 Mich. 589, 595.

"In *Theard v. United States*, 354 U. S. 278, at p. 281, the court said: 'It is not for this Court, except within the narrow limits for review open to this Court, as recently canvassed in *Konigsberg v. California*, 353 U. S. 252, and *Schware v. Board of Bar Examiners*, 353 U. S. 232, to sit in judgment on Louisiana disbarments, and we are not in any event sitting in review of the Louisiana judgment. While a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court's control over a lawyer's professional life derives from his relation to the responsibilities of a court.' See also: *Selling v. Radford*, 243 U. S. 46; *In re Crow*, 283 F. 2d 685, C. A. 6.

"We find no authority and none has been cited to us to support the appellant's contention that he has a right under the Federal Constitution to require the State Bar of Michigan to process his complaint. The regulation of the practice of law, including the procedure of disbarment and discipline of members of the profession, is a function of state government.

Consequenty there has been no deprivation of right which would give rise to a cause of action under section 1983, Title 42, U. S. C.

"In the final analysis, it is a judicial function to pass on the disbarment of a lawyer. As shown heretofore (In re Lockwood, Petitioners, supra), the regulation and control of the practice of law was not a power that was delegataed to the Federal government but remained in the states. Under the statutes of Michigan, the Supreme Court of that state has the final determination of a disbarment proceeding. Secs. 27.79, 27.102, Michigan Statutes Annotated; Sec. 25, Rule 15, State Bar of Michigan.

"In 1824, Mr. Chief Justice Marshall said: 'On one hand, the profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other, it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. *For these objects, some controlling power, some discretion ought to reside in the court.* This discretion ought to be exercised with great moderation and judgment; *but it must be exercised;* and no other tribunal can decide, in a case of removal from the bar, with the same means of information as the court itself." (Emphasis added.)

" 'The power is one which ought to be exercised with great caution, but which is, we think, incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession.' *Ex parte Burr,* 22 U. S. 529, 9 Wheat. 529. See also: *Ex parte Garland,* 71 U. S. 333, 378, 4 Wall. 333, 378."

B. The constitutionality of the State's statute creating the State Bar of Michigan and the constitutionality of the rules adopted by the Supreme Court of the State of Michigan concerning the State Bar of Michigan are not determinable in this proceeding.

As indicated elsewhere in this brief, the petitioner has failed to set forth a ground for relief in the United States District Court. The petitioner having failed to set forth a justiciable issue other than constitutionality, the Federal Courts have no authority to review constitutionality of either a State statute or of rules established by the Supreme Court of the State of Michigan, as independent and sole issues in this cause.

As stated by Mr. Justice McReynolds in *Williams v. Riley*, 280 U. S. 78:

> "The Federal Courts have no power *per se* to review and annul acts of state legislatures upon the ground that they conflict with the Federal or state constitution. 'That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is to rest upon such an act.'"

The constitutionality of the act creating the State Bar of Michigan, being Acts 58 of Public Acts of the State of Michigan of 1935, Michigan Statutes Annotated, Section 27.101 and 27.102, together with Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan (relating to procedures pertaining to the processing of grievances and petitions for reinstatement) were presented to the Supreme Court of the United States, *in re Petition of Walter O. Estes*. The State Bar of Michigan filed a brief in opposition thereto setting forth the manner in which said Rule 15 complies with the "due process" re-

quirements. The Supreme Court of the United States dismissed the petition for Writ of Certiorari. See *In the matter of Walter O. Estes*, 361 U. S. 829, 4 L. ed. 2nd 71, 80 S. Ct. 77.

We direct the Court's attention to the case of *Emmons v. Smitt*, 58 Federal Supplement 869, in the District Court of the United States for the Eastern District of Michigan, Southern Division (1944). Grievance proceedings were pending in the State Bar of Michigan with reference to the conduct of Harold H. Emmons, an attorney, being the plaintiff in the District Court suit. The defendants in the District Court were various State Bar officials, as to whom Mr. Emmons asked that an injunction be issued to restrain continuance of the grievance proceedings. Mr. Emmons contended that he had a right to be heard in a Court under the provisions of the Michigan Declaratory Judgment Statute, that the Supreme Court of Michigan had denied Mr. Emmons a right to be so heard, on the theory that he was "a lawyer" ignoring his rights "as a citizen", that he was or was about to be deprived of his property without due process of law, contrary to the Fifth Amendment and, further, that the Supreme Court of Michigan had abridged Mr. Emmons' privilege as a citizen of the United States by denying him equal protection of the law, contrary to the Fourteenth Amendment. The defendants in the District Court case, including the State Bar of Michigan, filed a motion to dismiss, which motion was granted in the District Court. In that suit, one of the prayers in the complaint in the District Court was that Act 58 of the Public Acts of Michigan for the year 1935, creating the State Bar of Michigan and authorizing the Supreme Court of Michigan to provide for the organization, regulation and rules thereof, be declared unconstitutional and void, under the provisions of the Constitution of the State of Michigan. The

District Court noted that Mr. Emmons had failed to present cases in the Court of his position in that connection, concluding that he had abandoned this position prior to the District Court's determination, and in addition, the District Court made reference to *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. 2d 905, in which the Supreme Court of Michigan held that the statute creating the State Bar of Michigan was constitutional, and from which the District Court noted there had been no appeal to the Supreme Court of the United States.

In addition, in the case of *Emmons v. Smith*, the District Court reviewed the constitutionality of the statute creating the State Bar of Michigan with reference to the Fifth Amendment, that "no person shall * * * be deprived of life, liberty or property, without due process of law." With reference to that question presented by the plaintiff in the District Court, the District Court held as follows:

> "The answer is 'no', since state and federal courts have all held that the right to practice law is not a property right nor is it a privilege granted or defended by the Federal Constitution. *Bradwell v. Illinois*, 16 Wall. 130, 139, 21 L. Ed. 442, after referring to previously decided cases, states the position of our highest tribunal in these words: 'unless we are wholly and radically mistaken in the principles on which those cases are decided, the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers which are not transferred for its protection to the Federal government.' See *Ex parte Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929; and *Green v. Elbert et al.*, 8 Cir., 63 F. 308.
>
> The right to practice law is NOT A PROPERTY RIGHT. *In re Thatcher*, D. C. Ohio, 190 F. 960; and *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. 2nd 905.

> The power of a court to investigate the conduct of its own officers is inherent. *Ex parte Burr,* 9 Wheat. 529, 6 L. Ed. 152.
>
> And while it may be contended that most of these cases involved admission to practice, it is also the rule of disbarment. See *Selling v. Radford,* 243 U. S. 46, 37 S. Ct. 377, 378, 61 L. Ed. 585, Ann. Cas. 1917D, 569, where it was held: '(a) that we have no authority to re-examine or reverse, as a reviewing court, the action of the supreme court of Michigan in disbarring a member of the Bar of the courts of that state for personal and professional misconduct; (b) that the order of disbarment is not binding upon us as the thing adjudged in a technical sense; • • • Meeting this situation, we are of opinion that, on the case presented, our duty is not to review the action of the state court of last resort,—a power which we do not possess."

In addition, in the case of *Emmons v. Smitt,* the District Court disposed of the question of constitutionality of the act creating the State Bar of Michigan under the provisions of the Fourteenth Amendment, that "Section 1 • • • no State shall • • • deny to any person within its jurisdiction the equal protection of the laws." In that connection, the District Court held as follows:

> "We cannot under the guise of 'constitutional rights violated' act as an appeal court over the Supreme Court of Michigan. *Rooker v. Fidelity Trust Company,* 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362; *United States ex rel. Parker v. Carey,* 7 Cir. 135 F. 2d 205. If a state court misses—and we carefully refrain from hinting that it has—but if it does miss in the interpretation of the scope of one of its own statutes—surely a federal court cannot interfere; otherwise every case triable by a state court could be brought here for review and the chaos to follow would be beyond description.

And even if we did have that right, we again direct attention to the fact that up to this point plaintiff has not been disbarred or disciplined and, as yet, the Michigan court has not finally refused to interpret the legal effect of the decrees and orders involved. He will have his day in court on that question. There is no denial to plaintiff of the 'equal protection' clause just because a legal question that he desires to have settled immediataely is to be taken up in a different order and by an augmented tribunal. We have been shown no authorities that Mr. Emmons can pick his own time and his own tribunal for hearing.

We concede, but do not determine, that a situation might possibly exist where, if the Supreme Court of Michigan arbitrarily and capriciously prohibited a state circuit court from proceeding under the declaratory judgment statute, the wronged person would have redress to either the Supreme Court of the United States, or to this court. But here the situation is different because the plaintiff is a lawyer and the Supreme Court of the State of Michigan by its inherent right has decreed the method by which a lawyer who is faced with disbarment or discipline can have his rights determined. The right to control and regulate the granting of a license to practice law in the State of Michigan belongs to the State and in Michigan is governed entirely by the Supreme Court. *Bradwell v. Illinois; Selling v. Redford, supra,* and other cases cited herein.

As a member of the bar plaintiff is going to have the question of what the legal breadth of those orders and decrees is settled, and when that happens, the effect will be the same as though the declaratory judgment had been the medium. But because Mr. Emmons is a lawyer and his right to practice law and not his rights as a citizen are being attacked, the procedure is entirely within jurisdiction of the state. If in the course of events his inter-

pretation of the scope of those orders and decrees is correct the matter is ended. If on the other hand the Supreme Court holds against him this Court would have no power to review."

The District Court also considered, in *Emmons v. Smitt*, the claim that the plaintiff's rights were violated with reference to the so-called "civil rights statute". In that connection, the District Court stated:

> "Claim is also made by plaintiff that he has a right to be in this court by virtue of the Judicial Code, title 28 U.S.C.A., Section 41, subparagraph 14. This is known as the 'civil rights statute'. But the civil rights which are protected by that paragraph are only those rights, privileges and immunities secured by the Constitution of the United States or some law of the United States passed pursuant to constitutional authority. *Simpson v. Geary*, D. C., 204 F. 507. It does not for example confer jurisdiction to enjoin a draft board for inducting plaintiff into the military service even though it is alleged that it so inducted him in violation of his constitutional and legal (civil) rights. *Bonifaci v. Thompson*, 252 F. 878."

The District Court summarized its holdings as follows:

> "(a) That the right to practice law is not a property right within the meaning of the Constitution.
>
> (b) That the act creating the State Bar of Michigan is constitutional.
>
> (c) That the right to practice law and the conduct of attorneys is strictly within the control of the State of Michigan and its Supreme Court.
>
> (d) That the declaratory judgment statute does not apply where there is a special statutory method for the determination of the particular type of case as in this instance.

(e) That there is no violation of the Fourteenth Amendment where there is a tribunal for hearing provided.

(f) That the civil rights statute stems from the rights, privileges and immunities secured by the Constitution and is not applicable in the case at bar."

The case of *Emmons v. Smitt* was appealed to the Court of Appeals for the Sixth Circuit, the opinion (1945) being set forth in 149 Federal 2d 869. In the opinion of the Court of Appeals, the Court stated that:

"Apropos of the charge that plaintiff was denied due process of law and equal protection of the laws, it is enough to say that Article VII, Sec. 4 of the Constitution of the State of Michigan vests in the Supreme Court 'general superintending control over all inferior courts; and • • • power to issue • • • and other original and remedial writs, and to hear and determine the same', and that under Sec. 27.29 of the Michigan Judicature Act, Mich. Stat. Ann. Vol. 20, p. 71, Comp. Laws 1929, Sec. 13535, the Supreme Court is granted specific power to issue 'writs of • • • prohibition • • • and • • • other original and remedial writs which may be necessary for the due execution of the law and the administration of justice, and the full and perfect exercise of its jurisdiction, and to hear and determine the same.'

The complaint sets out that plaintiff was a party defendant to the petition for the writ of prohibition and appeared before the Supreme Court and made his defense thereto and that after the writ issued in conformity with the court's opinion, the plaintiff filed at least two petitions to rehear, in which he set up the same constitutional objections now advanced and that these petitions for rehearing and reconsideration were denied. In other words, the complaint fails to show that plaintiff was denied any reasonable opportunity to make his defense before

the Supreme Court. The contention that he was denied the benefit of due process therefore necessarily fails. *State of Missouri ex rel. Hurwitz v. North*, 271 U. S. 40, 42, 46 S. Ct. 384, 70 L. Ed. 818. The complaint that the issuance of the writ of prohibition was erroneous falls far short of a challenge that due process was lacking in the proceedings which led up to it. See *American Ry. Express Co. v. Commonwealth of Kentucky*, 273 U. S. 269, 47 S. Ct. 353, 71 L. Ed. 639; *Arrowsmith v. Harmoning*, 118 U. S. 194, 195, 6 S. Ct. 1023, 30 L. Ed. 243; *Iowa Central Ry. Co. v. State of Iowa*, 160 U. S. 389, 393, 16 S. Ct. 344, 40 L. Ed. 467; *Tracey v. Ginzberg*, 205 U. S. 170, 177, 27 S. Ct. 461, 51 L. Ed. 755; *Bonner v. Gorman*, 213 U. S 86, 29 S. Ct 483, 53 L. Ed. 709; *Central Land Co. v. Laidley*, 159 U. S. 112, 16 S. Ct. 80, 40 L. Ed. 91; *McDonald v. Oregon, R. & Nav. Co.*, 233 U. S. 665, 669, 34 S. Ct. 772, 58 L. Ed. 1145.

The contention that plaintiff was denied equal protection of the laws as provided by the Fourteenth Amendment is unwarranted. There is nothing of substance in the complaint that the writ of prohibition was arbitrarily or capriciously issued or with any intention of affecting the rights of plaintiff as distinguished from those of any other citizen who had been or who might be found in the same class or confronted with the same circumstances. See *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 290, 293, 18 S. Ct. 594, 42 L. Ed. 1037."

The Court of Appeals further stated:

"We search in vain for a basis for jurisdiction of the District Court over plaintiff's action, in so far as it seeks to secure to him the right to practice his profession. The claim that it is found in sub-section (14) of Sec. 41, 28 U.S.C.A. (Suits to redress deprivation of civil rights) is without merit, since plaintiff's right to practice law is not secured to him by the Constitution nor by any law of the United States.

It is not a property right but a privilege granted by the State of Michigan. *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. 2nd 905; see also *Bradwell v. State of Illinois*, 16 Wall. 130, 21 L. Ed. 442; *In re Lockwood*, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929, *In re Thatcher*, D. C., 190 F. 969, 975.

The contention that Act 58 of the Public Acts of Michigan of 1935, creating a State Bar of Michigan, violates Article XII, Sections 1 and 2 of the Michigan State Constitution, presents no federal question. The proposition, if material to plaintiff's interests, must be determined, if it has not already been in *Ayres v. Hadaway, supra*, by the Supreme Court of the State, and 'is not a matter of federal concern.' *Erie R. Co. v. Thompkins*, 304 U. S. 64, 78, 58 S. Ct. 817, 822, 82 L. Ed. 1188, 114 A. L. R. 1487."

This Court is most familiar with its opinion of June 19, 1961 in the matter of *Trayton L. Lathrop, Appellant v. Joseph D. Donohue*, — U. S. —, 6 L. ed. 2nd 1191, in which this Court sustained constitutionality of the integration of the State Bar of Wisconsin. If the issue as to constitutionality of the integration of the State Bar of Michigan were before this Court, such constitutionality in that event should be upheld by reason of the content of the opinions of this Court in the *Lathrop* case.

Certainly, the determination which the petitioner requests in this matter would impose an overwhelming burden on the Federal Courts if the petitioner's position were correct. The result of the petitioner's requests in this proceeding would require that in any case in which a request for investigation is filed with a State grievance organization with reference to a member of any State Bar, in a case in which a hearing does not ensue, the Federal Court would be required to:

(a) Review the content of the request for investigation,

(b) Review the exhibits filed therewith,

(c) Determine that a proper number of copies had been filed with such state bar association to facilitate the processing of the matter under the grievance regulations of that State,

(d) Review the attorney's answer;

(e) Decide whether a sufficient issue is presented under the Canons of Ethics,

(f) Decide whether there has been compliance with reasonable procedural requirements of the State,

and, if hearings result, to review upon application:

(g) The manner in which the hearings were conducted,

(h) What witnesses were included and excluded,

(i) Whether the testimony of the witnesses reasonably established that misconduct had or had not been committed,

(j) Whether such grievance hearings were presented in adequate form to the Courts of that State, and

(k) Whether or not the Courts of that State acted reasonably on the basis of the request for investigation as filed, the attorney's answer, the proceedings had before the grievance committee and the testimony presented to the committee.

We submit that the Constitution does not contemplate, nor should the Federal Courts undertake, such potential detailed review of whether or not hearings should have been held, the nature of the hearings or the conduct of the State Courts, in matters pertaining to whether or not attorneys should be disciplined in and by the several States as officers of the Courts of the States.

C. The petitioner's assertions in his requests for investigation of some four Lansing attorneys, his assertions in his complaint filed in the District Court and his assertions herein constitute attempted collateral attacks on proceedings in the lower Courts of a State.

The petitioner states that the Will of Jessie E. Saier, deceased, was *duly admitted* to probate by the Probate Court for the County of Ingham, State of Michigan, that the petitioner attended the hearing on admission of the Will and upon inquiry, the petitioner stated that he had no objections whatsoever to the admission of said Will to probate (22a and 23a).

Upon presentation of his assertions to the State Bar of Michigan and in his complaint as filed in the District Court, the petitioner included a series of assertions that said Will was not duly executed, quoted from testimony with reference to the execution of the Will and made statements indicated by the petitioner to demonstrate that the Will was not executed in accordance with requirements for the execution of Wills in the State of Michigan (1b).

Further, it is apparent that said Will contained a clause providing a penalty in the event of contest, since the petitioner asserted in the District Court that he had never violated the contest clause contained in the Will (74a).

The petitioner has assumed two completely contrary positions: He asserted both to the State Bar of Michigan and to the District Court that he was possessed of knowledge, and could testify that, the Will of Jessie E. Saier, deceased, was not executed in accordance with legal requirements or in accordance with the testimony in a State Court as to execution of said Will; he stated to the Probate

Court at the time of admission of said Will that he had no objection thereto, that he has never violated the contest clause contained in said Will, and, particularly, that he neglected and refused to present to the Probate Court in the State of Michigan his reasons for demonstrating that said Will should not have been admitted to probate (even though present at the time of its admission). He accused said attorneys of conspiring together to gain admission of said Will even though the same was not executed in accordance with legal requirements according to the petitioner's assertions to the State Bar and to the District Court.

The petitioner requested the State Bar (and thereafter requested the District Court) to make a preliminary determination that said Will was not properly admitted to probate, as a preliminary to requesting discipline of the attorneys who obtained its admission; he refused to present these same assertions in the Probate Court at the hearing attended by the petitioner when the Will was admitted to probate. This obviously constitutes a collateral attack on the circumstances surrounding the admission of the Will to probate, without a direct challenge made by the petitioner in the Court where the Will was so admitted. His collateral attack on estate procedures continued as to subsequent probate proceedings (12a).

It is noted that the petitioner does not in any way challenge the jurisdiction of the Probate Court for the County of Ingham to have determined whether or not said Will should have been admitted to probate. His only challenge is with reference to the validity of the testimony presented in said Probate Court which had jurisdiction of the matter.

There was no authority in the State Bar of Michigan or in the District Court to entertain a collateral attack on the validity of the testimony presented to the Probate

Court for the County of Ingham with reference to the admission of a Will to probate, or other probate proceedings. See *Pettiford v. Zoellner*, 45 Mich. 358, 8 N. W. 57; *Potter v. Ranlett*, 116 Mich. 454, 74 N. W. 661; *Dunlap v. Byers*, 110 Mich. 109, 67 N. W. 1067; *Petranek v. Minneapolis, St. Paul and S. S. M. R. Company*, 240 Mich. 655, 216 N. W. 467; and *Richardson v. Richardson*, 309 Mich. 336, 15 N. W. 2d 660, certiorari denied 324 U. S. 864, 89 Law Edition 1420, 65 Supreme Court 912.

II.

WAS THE PETITIONER A PROPER PARTY TO PRESENT THE ISSUES DESCRIBED IN HIS COMPLAINT?

The District Court answered "No."
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

As stated in the Opinion and Order of Dismissal by the District Judge in this case (88a and 89a):

> "Concerning the case itself, the court has searched in vain in an attempt to find the 'right' which plaintiff is herein attempting to protect. The mere fact that the attorneys he attacks have not been disbarred does not necessarily deny to the plaintiff the constitutional rights he recites. Plaintiff's position has been that comparable to a complaining witness reciting a past wrong and seeking punishment for the culprit. Plaintiff is not a true party to the action sought since a disbarment is never viewed as an adversary proceeding in a strict sense. It is the court's right, as well as its duty, either directly or in its behalf to purge its officers of an unworthy member. It involves no private interest except that of the attorney. *Re Keenan* (1934) 287 Mass. 577.

> It is quite obvious that the actual damage alleged was the disinheritance suffered by the plaintiff.
>
> This was made abundantly clear in the oral argument. We understand that that case is or has been appealed to the Michigan Supreme Court. However, this private grievance does not give the plaintiff a special place to seek redress in a disbarment proceeding. *Re Keenan, supra.*"

When the petitioner or any other person files a complaint against a member of the State Bar of Michigan, he does so as a witness, rather than a as a party to a proceeding. When a Request for Investigation is filed in proper form, consisting of a *brief statement, in triplicate as to each respondent*, setting forth the details of each alleged act of misconduct (35a), this brings to the attention of the grievance organization of the State Bar of Michigan, acting under Michigan Supreme Court Rules, those alleged circumstances in order that the matter may be reviewed and inquiry made to determine whether or not the Courts of the State of Michigan may wish to impose discipline upon such attorney.

There is no such thing as a vested right on the part of a complainant to have an attorney disciplined with reference to whether or not he should be permitted to continue practicing law in the State of Michigan. Neither is there any vested right on the part of a complainant to have a hearing ensue in any case in which he files assertions with the State Bar of Michigan, regardless of the form in which said assertions are set forth and regardless of whether the complainant has filed sufficient copies of his exhibits or other matters pertaining to orderly proceedings in a review by the grievance organization of a State.

The Constitutional guarantees do not contemplate, nor do constructions thereof indicate, the enforcement of any right

of a complainant to have a hearing preparatory to the discipline of an attorney by the Courts of a State and, particularly, this is apparent when applied to a matter in which the length, form, the furnishing of sufficient copies or other details have been the subject of a dispute between the grievance organization of the State and such complainant.

The petitioner goes to great lengths in his Brief and in the complaint filed with the District Court to point out that a dispute arose between the petitioner and the State Bar of Michigan as to the form in which the petitioner had filed the requests for investigation of the Lansing attorneys. He then claims that he had a right to a hearing, regardless of the existence of such dispute as to the form in which the requests for investigation should be filed. This is the sole ground on which the petitioner attempts to invoke the jurisdiction of a United States Court.

We submit that the petitioner has failed to assert a "right" under the Constitution whereby he is a proper party to present the issues which he asserts in this matter. At most, the petitioner has stated that he is a witness in various matters which he claims should be prosecuted in the grievance organization of the State of Michigan, if and when filed in the form described by the State Court for the orderly presentation of complaints.

We respectfully refer the Court to the excellent treatment of this subject set forth in the opinion of the Court of Appeals for the Sixth Circuit in this case, under Section I of this Argument, sub-division A, appearing on pages 13 through 16, inclusive, of this Brief. The well-reasoned opinion of the Court of Appeals herein establishes that the Petitioner has no "right" secured to him by the Constitution of the United States or its Amendments, applicable to the circumstances of this case.

In the case of *Lathrop v. Donohue*, — U. S. —, 6 L. ed. 2nd 1191 (1961), the capacity of Mr. Lathrop as appellant to present the question of whether or not a right to freedom of association was violated by integration of the State Bar of Wisconsin, was not therein challenged. By contrast, the petitioner in this case has not described a "right" protected by the United States Constitution or its Amendments which could be determined by this Court on application of the Petitioner herein.

III.

DID THE PETITIONER STATE A GROUND FOR RELIEF?

The District Court did not specifically reach this issue in its opinion.
The Court of Appeals answered "No."
Respondents contend the answer should be "No."

A. The petitioner has failed to allege circumstances giving rise to damages as to the respondents in this cause.

The petitioner asserted in his complaint as filed in the District Court that he had filed requests for investigation of four Lansing attorneys who were connected with State Court proceedings concerning the Estate of Jessie E. Saier, deceased, and made reference to State Court litigation arising therefrom, all of which described conduct of the attorneys which *occurred prior* to the filing of his requests for investigation with the State Bar of Michigan. This is indisputable, since the petitioner could not have included in the requests for investigation anything which occurred thereafter, nor could he complain that hearings were not had or that discipline was not imposed by reason of subsequent matters.

It is submitted that whether or not the grievance procedures pertaining to grievances in the State of Michigan resulted in hearings being held or discipline imposed upon the attorneys or any of them, pertain only to the question of whether or not such attorneys *thereafter* shall practice law in the State of Michigan.

A result whereby such attorneys were permitted to continue to practice law in the State of Michigan, after the conduct asserted in the requests for investigation, could not injure the petitioner thereafter, unless the petitioner himself subsequently were to seek to employ those attorneys voluntarily (which appears unlikely) and if some other and future misconduct were to occur. Certainly, any damages to the petitioner by reason of possible subsequent conduct would be far too speculative an issue to submit in the District Court with reference to possible damages.

B. The petitioner's references to damages sustained by the petitioner are too inadequate and uncertain to permit speculation as to damages in this proceeding.

In the complaint filed by the petitioner in the District Court, the petitioner asserted that he believed himself to have been damaged because the Lansing attorneys had not been disciplined in the State of Michigan. In his brief under "argument", the petitioner now states that he did not intend to claim that he had a right to have the attorneys disbarred, but only a right to have his complaints processed as other complaints are processed under Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan (petitioner's Brief, page 20).

Accordingly, the petitioner's request for damages in this matter would involve a determination in the District Court that if the petitioner had filed his requests for investigation and his exhibits in proper form and with the proper number of copies of each for an adequate consideration of the matter, and if hearings thereon had been had before a grievance committee, the grievance committee would have made specific findings of fact founded upon the petitioner's assertions rather than the attorneys' defenses thereto, that the grievance committee would have recommended discipline beyond reprimand and consisting of either suspension or disbarment of the attorneys and that this suspension or disbarment would have avoided some financial loss to the petitioner which he has sustained because this was not accomplished. Any such series of determinations requested of the District Court would be far too speculative and uncertain to form the basis upon which to award damages to the petitioner.

We emphasize that the petitioner has not asserted in his requests for investigation, in his complaint filed with the District Court or in his Appendix or Brief filed in this Court, that he has at any time instituted proceedings in the State Courts either for injunction or for damages against any of the attorneys described in his requests for investigation, nor can he make any such assertion. In effect, the petitioner is requesting that the Federal Courts impose damages upon the State Court members and members of the State Bar grievance organization on the theory, that, as a result of the petitioner's assertions there might have been a determination by a Grievance Committee and by the State Courts that the attorneys should have been suspended or disbarred and that the petitioner, thereafter, might have avoided damages which he might subse-

quently suffer by reason of the attorneys being permitted to continue to practice as officers of the Courts of the State.

C. The petitioner has failed to allege circumstances setting forth inequality in the processing of the petitioner's requests for investigation as compared to other requests for investigation filed with the State Bar of Michigan.

The petitioner, in his Brief, states that his only claim of right is with reference to having his complaints processed by the State Bar in the same manner as other complaints were processed under the provisions of Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan (petitioner's argument, 20).

The petitioner not only admits, but affirmatively asserts at several places in his complaint filed with the District Court and his Brief, that a dispute existed between the petitioner and representatives of the State Bar of Michigan as to the form and sufficiency of the requests for investigation filed by the petitioner, and particularly whether he had filed his requests for investigation setting forth *briefly specific charges* of misconduct, with sufficient copies of his exhibits.

Nowhere in the complaint filed in the District Court nor in the Brief does the petitioner make reference to the form or content of any other requests for investigation processed under Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan. The petitioner implies that his requests for investigation were treated differently from other requests for investigation filed in the same or similar form but does not assert any basis for comparison. The

petitioner asks the Court to conclude that the petitioner has been denied equal protection of the laws on the basis that his requests for investigation were treated differently from other requests by other persons, but the petitioner has provided the Court nothing but a conclusion.

D. The petitioner has not demonstrated that he has been denied a hearing.

The petitioner states at several places in the complaint filed in the District Court (such as 27a to 31a inclusive) that a dispute existed between the petitioner and representatives of the State Bar of Michigan as to the adequacy of the form in which the petitioner set forth his assertions in his requests for investigation of the three or four Lansing attorneys, indicating that he filed one set of requests for investigation against the four attorneys and subsequently revised the same and re-filed the requests for investigation, with a dispute still existing as to the sufficiency thereof and particularly as to whether the same complied with Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan.

The petitioner does not assert, nor can he assert, that he made any further attempt to comply with procedural requirements of the State Court for the orderly presentation of complaints. Instead, apparently, the petitioner thereupon decided that two attempts to set these matters forth were enough, filed a series of two petitions for Writs of Mandamus with the Supreme Court of the State of Michigan, each of which were denied, and even then did not attempt further revision in order to comply with said rule but thereupon waited an additional two (2) years after the denial of the second petition for Writ of Mandamus, decided his constitutional rights had been violated and filed a complaint in the District Court.

We submit that the petitioner has not demonstrated that he has been denied a hearing. At most, he has demonstrated that a dispute existed as to the form in which he had filed his requests for investigation and whether or not the same complied with the rule requisite to the orderly processing of complaints.

The most that the petitioner can or does assert is that a dispute existed as to form of his complaint and that it was suggested to him that it be amended, even as to the second set filed by the petitioner.

As to these sets of requests for investigation filed by the petitioner, in 1956, he still has failed to amend his requests for investigation in order that they consist of *brief statements* setting forth *specific charges* of misconduct, or filing an adequate number of copies of his exhibits to which reference was made in the requests for investigation (68a) for service of the same upon the respondent attorneys.

To this date, the petitioner, has not been denied a hearing. He has decided to construe the suggestion that he amend the form of his requests for investigation as denials. Further, he is asking the Federal Courts to interject themselves into the processing of requests for investigation, even to the point of construing whether or not a suggestion that certain papers be amended, and the form thereof, as a denial of a hearing and, even further, a denial of constitutionally-guaranteed rights. We submit that the procedures adopted by the petitioner indicate a greater interest in becoming a party in Federal Court litigation than in obtaining the imposition of discipline by the State Courts as to its officers.

As stated in the opinion of the Court of Appeals for the Sixth Circuit in this case (pages 32 and 33 of the Appendix contained with the Petition herein):

> "The appellant has alleged in his complaint that he twice petitioned the Supreme Court of Michigan for a writ of mandamus to require the State Bar officers to process his request for investigation and that his petitions were twice denied. This was a proper forum and if there were constitutional questions involved he could have petitioned the Supreme Court of the United States for certiorari. The District Court cannot review the proceedings of the Supreme Court of Michigan. Having pursued a remedy in a proper forum and in a court with jurisdiction to hear his cause, we are of the opinion that a denial of relief by that court terminated the appellant's litigation to require further action by the State Bar.
>
> "After this denial, he should have given consideration to the request of the State Bar Officers. It is alleged in the complaint that on October 3, 1956, he was requested to furnish new forms which he refused to do. There is nothing in the complaint to show that this request was arbitrary or capricious and, in refusing to comply, the appellant cannot say that the bar refused to process his complaint but, rather, he puts himself in default by his own allegations."

E. The petitioner presented conflicting statements and admonitions whereby the petitioner made it impossible to process his requests for investigation of the attorneys.

The requests for investigation as filed by the petitioner, requesting that four separate files be established as to four separate attorneys, made reference to a single file of

exhibits and photostatic copies of about fifty-six (56) pages (68a) which were incorporated in each of said four requests for investigation by reference and said requests for investigation included an admonition that neither the requests for investigation, nor those papers incorporated therein, were to be filed either with the Ingham County Probate Court "or any other Court * * *" (71a).

The Court's attention is directed to Section 13 of Rule 15 of Michigan Supreme Court Rules concerning the State Bar of Michigan, the second sentence of which is as follows:

> "If the certified report of a grievance committee recommends discipline by the court, it shall be the duty of the chairman to file the report either in the circuit court for the county in which the misconduct occurred, or in the circuit court for the county in which the respondent has either his office or residence."

As appears to be the case in most other states, the imposition of discipline by way of suspension or disbarment can be done only by the Courts of a State, the grievance committees serving the purpose of hearing evidence, making finding of fact and submitting to the Courts a recommendation as to the degree of discipline which should be imposed as to an attorney. Petitioner concurs in this (38a, lines 14-19).

In this instance, the petitioner admonished the State Bar of Michigan that it was not to file the materials in the requests for investigation or any of the exhibits or photostatic copies incorporated therein in any Court. The petitioner added the words "directly or indirectly" by any person attempting to have the petitioner disinherited in the Will, although the construction of the admonition not to file any of the materials in any Court could not be as-

sumed by the State Bar of Michigan, particularly when followed by the words "directly or indirectly". Accordingly, even had the requests for investigation proceeded to hearings and even had the grievance committee recommended suspension or disbarment of the attorneys, if the State Bar at that stage had complied with the admonition made by the petitioner at the outset that the papers were no to be filed in any Court, the grievance committee could not have filed a certified report with a Circuit Court of the State in order that such Court could impose any discipline recommended.

In short, petitioner admonished the State Bar at the time he first filed the requests for investigation that the matters therein set forth together with the petitioner's exhibits and photostatic copies, could not be filed with a Court. The imposition of discipline against the attorneys involved could only be had by Court action. The petitioner attempted to establish his own rules as to the manner in which the grievances would be processed, at what stage they must stop, and what matters could or could not be filed in Court by the State Bar.

IV.

WERE THE MEMBERS OF THE SUPREME COURT OF THE STATE OF MICHIGAN, OR THE DISTRICT JUDGE OR MEMBERS OF THE COURT OF APPEALS DISQUALIFIED?

The District Court answered this question "No" as to members of the Supreme Court of Michigan.
The Court of Appeals answered this question "No" as to the members of the Supreme Court of Michigan.
Neither the District Court nor the Court of Appeals reached this alleged issue as to the District Judge.
The Court of Appeals did not reach this alleged issue as to the members of the Court of Appeals.
Respondents contend the answer should be "No."

With reference to the Petitioner's charge that the members of the Supreme Court of Michigan were disqualified from sitting in the mandamus actions or that they were guilty of a conspiracy, we refer to the excellent discussion of this subject contained in the opinion of the Court of Appeals for the Sixth Circuit in this case (on pages 33 and 34 of the Appendix appended to the Petition herein):

> "The appellant charges in his complaint that the members of the Supreme Court of Michigan were disqualified from sitting in the mandamus actions for the sole reason that they themselves were members of the Michigan State Bar. The situation is not open to any such arbitrary presumption. Lawyers are officers of the court and the courts have a duty to supervise their conduct. As Mr. Chief Justice Marshall said, in ex parte Burr, supra, 'The power is * * * incidental to all courts, and is necessary for the preservation of decorum, and for the respectability of the profession."
>
> "The judges are as much interested as any third person could be in the decorum and respectability

of the lawyers who practice before them. It is inconceivable that the judges of the Supreme Court would so far transgress the dignity and responsibilities of their high office to protect lawyers in such misconduct, as is inferred here, at the expense of the reputation of its bar.

"There is no charge in the complaint that the judges, in denying the petitions for mandamus, acting arbitrarily, capriciously, or maliciously. We must assume then that they acted in good faith in their judicial capacity. Judges are immune from suit arising out of their judicial acts and the civil rights statutes create no exception to this rule. *Bradley v. Fisher*, 80 U. S. 335; 13 Wall. 335; *Kenney v. Fox*, 232 F. 2d 288, C. A. 6; *Allen v. Groat*, 283 F. 2d 692, C. A. 6.

"The appellant in his complaint alleges that the Michigan Supreme Court and the Michigan State Bar conspired together and with others unknown to him to deny him the rights of which he complains. The allegations in the complaint are that the appellant filed actions for mandamus in the Supreme Court and that they were denied. None of the elements of conspiracy are pleaded. There is only the conclusion of the pleader.

"The accepted definition of a conspiracy is, a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means." *Duplex Co. v. Deering*, 254 U. S. 443, 465."

With reference to the petitioner's assertions and conclusions that the District Judge and a member of the Court of Appeals were disqualified by reason of membership in the State Bar of Michigan, together with a further asser-

tion that another member of the Court of Appeals was disqualified by reason of prejudice, we point out to the Court

(a) We know of no rule requiring that either the District Judge or that members of the Court of Appeals be required to continue membership in a state bar association after their appointment to office as such. In the event either the District Judge or a member of the Court of Appeals were to resign from a state bar association, it does not appear that this would be cause for removal of such a judge from office. Accordingly, any membership by either the District Judge or a member of the Court of Appeals in the State Bar of Michigan or in any other state bar association would be on a voluntary, non-compulsory basis. There would be no compulsion whatsoever on the part of either a District Judge or a member of the Court of Appeals to determine a case in a particular way by reason of the matter affecting a state bar association of which that Judge is not required to be a member in order to continue in office.

In addition, the petitioner waived any right to challenge the qualification of the District Judge. There was no motion or affidavit of prejudice filed in the District Court challenging the District Judge's qualification to sit as the District Judge in this cause (1a).

(b) The unsupported assertions and unwarranted conclusions of the petitioner in his references to the District Judge, individually, and as to two members of the Court of Appeals for the Sixth Circuit, individually, are demonstrative of the unsupported and unwarranted nature of the assertions and conclusions of the petitioner in his descriptions of the conduct of various of the respondents herein, in his pleadings and in his brief.

SUMMARY OF ARGUMENT

The petitioner has failed to state a cause of action cognizable by the United States District Court, since discipline and the proceedings pertaining thereto with reference to an attorney's membership in the bar of a state are exclusively within the jurisdiction of the Courts of that state.

The constiutionality of integration of the State Bar of Michigan is not determinable in this proceeding since it is not properly before the Court in this case. The petitioner has failed to set forth any justiciable issue other than such constitutionality, which cannot be reviewed as a sole issue herein. Even if this issue were before the Court, the determination thereof should be in favor of such constitutionality under the provisions of prior applicable cases and particularly under the provisions of a recent opinion in this Court itself.

The rules pertaining to the State Bar of Michigan as established by the Supreme Court of Michigan previously have been held by this Court to comply with "due process" requirements, in the petition for a Writ of Certiorari in a prior matter. These rules do comply with "due process" requirements.

The Federal Courts should refrain from complying with the request of the petitioner that the Federal Courts supervise disciplinary proceedings estaiblished by State Courts pertaining to their own officers, both by reason of there being no jurisdiction for such supervision and also by reason of the intolerable burden which any such supervision would place upon the Federal Courts.

The petitioner's assertions with reference to the circumstances giving rise to his alleged complaints constitute attempted collateral attacks on various proceedings in the lower Courts of the State of Michigan, such as challenging the validity of testimony presented at admission of a Will to probate, to which admission the petitioner specifically did not object. Such a collateral attack could not have been entertained either by the grievance organization of the State Bar of Michigan, or by the Supreme Court of the State of Michigan at the hearings on the petitions for mandamus, or by the District Court.

The petitioner is not a proper party to present the issues described in his complaint since he has failed to describe any "right" secured to him either by the Constitution of the United States or its Amendments. The petitioner was in the capacity of a complaining witness when he filed complaints against members of the State Bar of Michigan and not a party to a proceeding. He had no right to a hearing, regardless of the form in which the complaints were filed, secured to him in that capacity by the Amendments to the Constitution of the United States.

The petitioner failed to state a ground for relief for several reasons. He failed to allege circumstances giving rise to damages, although he prayed for damages in his complaint as filed with the District Court. Any references by the petitioner to damages as contained in the complaint would be too speculative to permit any award of damages thereon.

The petitioner has not described circumstances establishing that he was denied a hearing on his complaints filed with the State Bar of Michigan. He alleged that a dispute existed between the petitioner and the State Bar as to whether his complaints were in a sufficient form, and

whether he had furnished sufficient copies of the exhibits, for service upon the respondent attorneys in a form adequately to inform them as to the nature and details of the charges which the petitioner wished to make against them. Indeed, it might well be that attempted processing of these files by the State Bar would not have complied with the rights of the attorneys to be served with papers adequately informing them as to the details and nature of the charges being made against them.

The form in which the petitioner filed his complaints with the State Bar of Michigan contained conflicting admonitions by the petitioner, in such manner that the State Bar would not clearly have been at liberty to file disciplinary proceedings in Court, after any Grievance Committee hearing. The petitioner attempted in his complaints to establish the rules under which his complaints would be heard, rather than by following the rules applicable to members of the State Bar of Michigan as established by the Supreme Court of Michigan.

Throughout his briefs and pleadings, the petitioner makes reference to having been deprived of his "day in Court". The petitioner repeatedly alleges that certain attorneys in Lansing, Michigan, committed misconduct or malpractice. None of the respondents herein is alleged by the petitioner to have interfered in any manner whatsoever with whatever civil action the petitioner might have had against any one of those attorneys by reason of such alleged malpractice. Indeed, the petitioner has not alleged that he ever commenced any proceeding against any of the Lansing attorneys founded upon the alleged malpractice by those attorneys. The petitioner is attempting to accomplish indirectly what he cannot do directly. He has refrained from seeking damages from the attorneys whom

he claims committed wrongs against him and, in the District Court complaint, he seeks damages against the organization of which those attorneys were members.

Even then, the petitioner does not seek damages from these respondents on any allegation of having interfered with his cause of action, if any, against those attorneys for the alleged malpractice described by him, but by reason of a lack of proceedings by way of discipline to those attorneys, who are not even respondents in this proceeding. Indeed, the petitioner has not been deprived of his "day in Court" as to any malpractice committed against him by any attorney.

CONCLUSION

These respondents respectfully pray that the petitioner be denied issuance of a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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Dated: November 15, 1961.